IN THE HIGH COURT OF UTTARANCHAL AT NAINTIAL

Criminal Appeal No. 1572 of 2001
(Old No. 2704 of 1984)

B.R. Bheem
S/o Sri Narain Lal
R/o 116, Purwa Shekh Lal,
Meerut City, Police Station Civil Lines,
Meerut.

……. Appellant

Versus

……. Respondent

Ms. Syed nadim, Amicus Curiae for the appellant.
Mr. Rajeev Mohan Birkhani and Mr. Sudhir Chaudhary, learned Brief Holder for the respondent State.

Hon'ble Prafulla C. Pant, J.

This criminal appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 4 / 5.09.1984, passed by learned Special Judge (Anti Corruption), Dehradun, in C.B.I. Trial No. 06 of 1982, whereby appellant B.R. Bheem has been convicted under Section 409 of the Indian Penal Code, 1860 (for brevity hereinafter referred as I.P.C.), and is sentenced to rigorous imprisonment for a period of twenty months. The accused / appellant is also convicted under Section 5(2) of the Prevention of Corruption Act, 1947, and sentenced to rigorous imprisonment for a period of fifteen months, and to pay fine of Rs. 3,000/-, in default of payment of fine, the trail court directed the accused / appellant to undergo simple imprisonment for further

period of six months. The sentences were directed to run concurrently.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that in the year 1979, accused / appellant B.R. Bheem was posted as Upper Division Clerk-cum-Cashier in the office of Chief Medical Officer, Central Government Health Service (hereinafter referred as C.G.H.S.), Meerut. While, he was serving on said post, he was entrusted with the amount, particulars of which are given, as under:

Sl. N.	**Bill No. and date**	**In favour of**	**Purpose**	**Cheque No. & Dt.**	**Amount (In Rs.)**
1	166 22.06.79	Brig. O.P. Raghav	House rent	A-872145 22.06.79	500/-
2	167 22.06.79	Dr. R.N. Agarwal	Pay	A-872142 22.06.79	680/-
3	170 25.06.79	Telephone Deptt.	Tel. Bill	C-189211 25.06.79	540/-
4	171 25.06.79	Dr. R.K. Mishra	Pay	A-873156 25.06.29	815/-
5	172 25.06.79	Dr. R.K. Mishra	Conveyance Allowance	A-873156 25.06.79	105/-
6	449 16.11.79	1. Smt. Ram Pyari	Rent	A-872424 19.11.79	650/-
		1. Sri S.P. Chadda	Rent	A-872425 19.11.79	480/-
7	452 13.11.79	1. Telephone Department.	Tel. Bill	C-189217 19.11.79	997/-
		2. Sh.M.P. Sharma	Rent etc.	A-872422 19.11.79	586/-
		3. Smt. Kanta Devi Jain	Rent etc.	A-872423 19.11.79	210.15

Although, the aforesaid payment was made through the account payee cheque, B.R. Bheem (appellant), had shown these payments made from cash in hand. As such, he embezzled said amount. Apart from this, on 23.11.1979, the payment received by cheque No. B-076624 for an amount of Rs. 2101.65 paise, the appellant did not accounted for the same in the ledger. Similarly, on 29.06.1979, an amount of Rs. 836.75 paise, received through T.R. Voucher No. 510586, was not accounted for by him, in the cash book. In all, it is alleged by the prosecution that the appellant misappropriated an amount of Rs. 7490.14 paise, entrusted to him.

4) The Central Bureau of Investigation, after investigation in this case, submitted charge sheet, on which the trail court, after framing charge against the accused, recorded evidence of P.W.1 Dr. U.C. Mahandra, Chief Medical Officer; P.W. 2 Vijay Raman (the desk officer); P.W. 3 Ved Prakash (peon); P.W. 4 Shyam Sundar (another employee of the office of Chief Medical Officer); P.W. 5 Dr. R.N. Agarwal; P.W. 6 S.P. Chadda; P.W. 7 Jagannath Singh (Head Cashier of Bank of Baroda); P.W. 8 R.N. Arora (Accountant); P.W. 9 Janardhan Raghav; P.W. 10 R.K. Misra; P.W. 11 S.K. Jain; P.W. 12 Dr. S.D. Verma; P.W. 13 P.K. Sharma,; P.W. 14 Amar Singh (handwriting expert) and P.W. 15 M.C. Joshi (Investigating Officer).

5) After the evidence was put to the accused under Section 313 of Cr.P.C., on behalf of the accused, defence witness Jai Pal Singh was got examined. Learned trail

court, after hearing the parties found the charge of offence punishable under Section 409 of I.P.C. and that of one punishable under Section 5(2) of the Prevention of Corruption Act, 1947, proved against the accused B.R. Bheem, and accordingly convicted him, and after hearing on sentence, sentenced him, as mentioned earlier. This appeal was preferred by the appellant B.R. Bheem before the Allahabad High Court, from where it has been received by way of transfer to this Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal. The appellant, even after being sent several notices by this Court, did not turn up. Ultimately, Mr. Syed Nadim, Advocate was appointed as Amicus Curiae to assist the Court on behalf for the appellant.

6) Perusal of the evidence on record shows that P.W. 1 Dr. U.C. Mahandra, who was Director General of C.G.H.S., Meerut, has stated that B.R. Bheem was a Cashier in his Office. He also proved the bill Ext. A –1, cheque Ext. A –2, cheque Ext. A –3, bill Ext. A –4, bill Ext. A –5, Cheque Ext. A –6, to Ext. A –8, cash Book entries Ext. A –10 to Ext. A –12, cheque Ext. A –13, attesting endorsement Ext. A –14 & Ext. A –15, Cash Book entries Ext. A –16 to Ext. A –22. Handwritten entry (Ext. A –24) of the accused, receipt of Bhagwat Prasad, Cashier Ext. A –25 and telephone bills Ext. A –26 and Ext. A –27. P.W. 2 Vijay Raman, desk officer of the Officer of C.M.O., C.G.H.S. Meerut, has proved the sanction (Ext. A –28) to prosecute the accused. P.W. Ved Prakash, peon of the Officer of C.M.O., C.G.H.S. Meerut, has stated that he

encashed cheque Ext. A –13 and paid the amount to the accused B.r. Bheem. P.W. 4 shyam Sundar (another employee of the office of the C.M.O., C.G.H.S. Meerut) has stated that he was a Pharmacist and paid Rs. 836.75 paise to accused B.R. Bheem, towards outstanding dues, he had to pay. P.W. 5 Dr. R.N. Agarwal, Medical Officer, has stated that he deposited cheque Ext. A –32, issued in his favour under his signatures, Ext. A –33, on acquittance roll Ext. A –34, in his bank account with Union Bank of India, and denied having received cash amount of Rs. 680..65 paise in this regard. Similarly, P.W. 6 S.P. Chadda has stated that he got cheque Ext. A –2 for Rs. 480/-, and deposited the same with the Bank and did not receive any sum of aforesaid amount in cash, from the accused. P.W. 7 Jagannath Singh, Head Cashier of Bank of Baroda, has stated that cheqes Ext. A –2, Ext. A –6 to Ext. A –8, Ext. A –13 and Ext. A –32 were encashed from the Bank of Baroda and the amount of the cheques were debited to the account of the C.G.H.S. Meerut. P.W. 8 R.N. Arora accountant in the C.G.H.S., had proved the cash book entries and entries in the acquittance roll. P.W.9 Janardhan Raghav has stated that he received Rs. 500/- through cheque Ext. A –38. P.W. 10 R.K.Misra also proved that he received cheques Ext. A –47 and Ext. A –48 and that he deposited the same in his account in Punjab National Bank, and denied having received any cash amount. P.W. 11 S.K. Jain and P.W.12 S.D. Verma and P.W. 13 P.K. Sharma have also made the similar statement with regard to the amount relating to them. P. W. 14 Amar Singh is a handwriting expert, who proved report Ext. A –59.

7) From the documents and the oral evidence, it is clear that the trick placed by the accused /appellant is that in respect of the amount, which were paid to the concerned parties through cheque, he used to show them in the cash book, as if the amount was drawn from the cash chest. It has come on the record the he was having key of the cash chest and he was the person responsible for making entries in cash register, as such, this Court is in agreement with the finding recorded by the trial court that the charge of offence punishable under section 409 of I.P.C. against the appellant is proved beyond reasonable doubt.

8) Learned Amicus Curiae on behalf of the appellant argued that, since, all the witnesses have received the payment, the only mistake that the entry was not made in the cash book relating to said amounts is a technical defect and a bonafide one, on the part of the appellant. This court is of the view, that had that been the case, the amount shown to have been paid from the cash should have tallied with the cash chest. Learned Amicus Curiae on behalf of the appellant further argued that the cash chest was not verified. It has come on the record that the appellant did not hand over the key of the cash chest willingly, and from the evidence of Dr. U.C. Mahandra, Director General of C.G.H.S. Meerut, it has also come on the record that there was no excess amount in the cash chest, which could show bonafides on the part of the appellant.

9) For the reasons as discussed above, this appeal has no merit and the same is liable to be dismissed. The appeal is dismissed. The accused / appellant B.R. Bheem is on bail. His bail is cancelled. The trail court shall take him into custody forthwith to make him serve out the un-served part of the sentence, awarded against him.

(Prafulla C. Pant, J.)

Dt. November 03, 2006.
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